

EXHIBIT F-1

In the Matter Of:

FREEMAN v

DEEBS-ELKENANEY

CHRISTINE WYTHOHN

September 13, 2023



1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Civil Action No. 1:22-cv-02435-LLS-SN
4

5 -----
6 LYNNE FREEMAN, an individual,

7 Plaintiff,

8 -vs-

9 TRACY DEEBS-ELKENANEY P/K/A TRACY WOLFF, an
10 individual, EMILY SYLVAN KIM, an individual,
11 PROSPECT AGENCY, LLC, a New Jersey limited
12 liability company, ENTANGLED PUBLISHING, LLC, a
13 Delaware limited liability company, HOLTZBRINCK
14 PUBLISHERS, LLC D/B/A MACMILLAN, a New York
15 limited liability company, and UNIVERSAL CITY
16 STUDIOS, LLC, a Delaware limited liability
17 company,

18 Defendants.
19 -----

20
21 REMOTE TESTIMONY OF CHRISTINE WITTHOHN

22 SEPTEMBER 13, 2023 - 9:00 A.M. PDT
23

24
25 JOB NO. 2023-911530

SEPTEMBER 13, 2023

9:00 A.M. PDT

DEPOSITION of CHRISTINE WITTHOHN, before
S. Arielle Santos, Certified Court Reporter,
Certified LiveNote Reporter and Notary Public.

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19

20 ALSO PRESENT:

21 EMILY KIM

22 TRACY WOLFF

23 VALERIE BELTRAN, Video Monitor

24

25

1 CHRISTINE WITTHOHN

2 not true, would that change any elements
3 of your opinions about Tracy Wolff's
4 career?

5 STEPHEN DONIGER: Objection.

6 Vague and ambiguous. Calls for a
7 legal conclusion.

8 THE WITNESS: I am not quite
9 sure what you are asking.

10 BY BEN HALPERIN:

11 Q If I understand your report,
12 what you are trying to do is explain why
13 you believe Tracy Wolff needed to resort
14 to copying from Ms. Freeman around 2019;
15 is that correct?

16 A Yes, that is.

17 Q Okay.

18 And is it your opinion that
19 Tracy Wolff's career was floundering so
20 she resorted to copying from Ms. Freeman?

21 A That is not just from what I
22 saw, but it's also behind the scenes; the
23 back and forth of all of them working on
24 the story together, that it wasn't
25 actually -- the Crave series was actually

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2 BY BEN HALPERIN:

3 Q Do you have an opinion on the
4 quality of Ms. Freeman's writing?

5 A I don't. I would probably not
6 have picked her up as a client.

7 Q You mentioned that you reviewed
8 data in your report; is that correct?

9 A Data? Yes.

10 Q Sorry, D-A-T-A.

11 A Hm-hm.

12 Q And your report mentions data
13 from Publishers Marketplace, NPD
14 BookScan, and Amazon, correct?

15 A Correct.

16 Q And are you aware that we asked
17 you to provide that data on
18 September 5th?

19 A I just received that you asked
20 for that. Again, I am horrible about
21 dates because my days are running
22 together -- this is the busiest time of
23 the year. So I think it was either
24 yesterday or the day before. So, yes, I
25 am aware.

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2 Q But you have not provided us
3 with any of the Publishers Marketplace,
4 NPD BookScan, or Amazon data that you
5 considered, correct?

6 A I am aware that you asked for
7 it. I cannot provide it. If you want to
8 get on to Publishers Marketplace and get
9 a subscription, you can. Same thing with
10 BookScan. BookScan is very, very strict
11 about who can use it, how many times you
12 can use it, and there's a pay scale. So
13 if you -- I am sure you can have access
14 to that. And everyone has access to
15 Amazon.

16 Q Why can't you provide the data
17 you considered to us?

18 A I have a membership.

19 Q Are you finished answering?

20 A Yes.

21 Q Can't you print out the data and
22 make a PDF and send it to us?

23 A In terms of service, that's paid
24 for. And as I said, if you want
25 BookScan, I know you have access to that

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2 and they know -- I am sure that the
3 publisher has the full scale of what they
4 can -- what they can -- you know, the
5 information that they can get.

6 I am a one-woman show, so I have
7 limited access and I pay for that limited
8 access. I don't have permission to go
9 outside that. I mean, you know, again,
10 if you want that information, I am sure
11 that you have access.

12 Q And I will represent to you, as
13 you are aware, that there's a protective
14 order in this case and I will represent
15 that defendants would keep anything you
16 produce from your data strictly
17 confidential and not use it outside the
18 litigation.

19 Is it correct that you are
20 refusing to provide us with the data that
21 you considered from Publishers
22 Marketplace, NPD BookScan, and Amazon?

23 A I am not refusing to supply
24 anything. What you are trying to do is
25 to get me in trouble, so, you know,

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2 possibly I get kicked off. I have a
3 subscription.

4 Q With due respect, we are not
5 trying to get you in trouble. We are
6 merely trying to see the data that you
7 looked at.

8 So just let me ask one more time
9 and if the answer is no, we will leave it
10 alone.

11 A Hm-hm.

12 Q But you answer no, that you are
13 not going to provide that data?

14 A I will discuss it with my
15 counsel to see if I can or can't.

16 Q What is Publishers Marketplace?

17 STEPHEN DONIGER: Something
18 just occurred to me, and I don't
19 want to interrupt your
20 questioning, Ben, but I am
21 wondering if this might be a
22 solution.

23 And maybe in the next break
24 we look into whether this is an
25 option.

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2 Ms. Witthohn, would you be
3 able to screen share and show the
4 information, if the concern is
5 making a copy of it and
6 distributing a copy --

7 (Simultaneous Crosstalk.)

8 THE WITNESS: No --

9 STEPHEN DONIGER: -- let's
10 discuss it at the next break and
11 see if that's an option.

12 THE WITNESS: I will discuss
13 it with Jeff during the break.

14 BEN HALPERIN: Thank you.
15 And Steve, I appreciate the
16 suggestion. Let's discuss it off
17 the record if that's okay.

18 STEPHEN DONIGER: Sure.

19 BY BEN HALPERIN:

20 Q My question before Steve's idea
21 was, what is Publishers Marketplace?

22 A It's a site where people post --
23 professional people, industry pros, post
24 site -- post sales, post information.
25 It's also open to the public, if they

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would like to get a subscription to that information. But it's a tool that industry pros use to track sales, to see what kind of sale an industry pro has had.

It's a voluntary site in the sense that you don't have to post but you can. And you can post information from the sale to what the story's about. Sometimes people use it to attract dramatic interest.

Anyway, that's what the site is.

Q So if an author or publisher does not post a deal on Publishers Marketplace, it wouldn't be on there, correct?

A Correct. Unless -- unless -- because there are different parties to a sale, so if -- if the parties don't -- if one -- if either one of the parties do not post, then you won't see it.

Q So it's possible that there are sales and/or deals that exist but are not shown on Publishers Marketplace?

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2 A Absolutely.

3 Q What is NPD BookScan?

4 A It is a site that tracks sales
5 and trends, and publishers use it in
6 order to draft a P&L statement in order
7 to see what they want to buy, what they
8 don't want to buy.

9 It is a very small screenshot
10 of -- it is -- it's a tool. It's a small
11 screenshot of print books that has been
12 sold around the country at secret
13 locations. So it's a snapshot.

14 Q So am I correct in understanding
15 that it's a snapshot of sales of print
16 books?

17 A And e-books, it can -- they have
18 added e-books. But for the most part,
19 people look at it for print books.

20 Q And is it voluntary posting to
21 it the same way that Publishers
22 Marketplace is or is it different?

23 A No, it's different.

24 Q Does it capture all sales for a
25 relevant book or eBook?

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2 A It does not.

3 Q What does it not capture?

4 A It does not -- again, it's a
5 snapshot. It doesn't -- it just reports
6 what is reported to them. And they have
7 secret locations throughout the United
8 States that, you know, different book
9 stores that nobody knows about, otherwise
10 they'd take advantage of it.

11 But it's just a tool that --
12 primarily publishers use it more than --
13 more than agents, but we use it because
14 publishers use it for P&L statements.

15 Q Do you know who reports the data
16 to NPD BookScan?

17 A Publishers, book store -- and
18 bookstores.

19 Q And so data would only be an NPD
20 BookScan if a publisher or a book store
21 reported it to them?

22 A Yes. And I will make a caveat,
23 Amazon doesn't usually report their
24 numbers. They don't share.

25 Q You also considered data from

1 CHRISTINE WITTHOHN

2 Amazon, correct?

3 A Yes.

4 Q And what specific Amazon data
5 did you consider?

6 A Primarily just the reviews and
7 the rating.

8 Q So you looked at the reviews of
9 Tracy Wolff's books on Amazon and the
10 customer ratings for them?

11 A I did.

12 Q Anything else from Amazon?

13 A The descriptions.

14 Q The descriptions of the books,
15 correct?

16 A Correct.

17 Q So I think I understand that for
18 Amazon, I can find your data just by
19 searching the books and looking at the
20 reviews and ratings and descriptions,
21 correct?

22 A Correct.

23 Q For NPD BookScan, how can I
24 search and find what you looked at?

25 A You can get a subscription and

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2 then you can look at the -- I think they
3 do a release to date and they give you, I
4 think -- I think they report by week or
5 day. But if the book -- if it's an older
6 book, what you are going to be looking at
7 is release to date.

8 Q And did you search for Tracy
9 Wolff or for different pen names?

10 I'm just trying to understand
11 specifically what you searched for.

12 A I looked at all of her names.

13 Q On NPD BookScan, correct?

14 A Correct.

15 Q And is that the same thing you
16 did on Publishers Marketplace?

17 A Correct. What I did was, I did
18 all sales for each of her names to see
19 where -- where -- what publishers
20 acquired her. Just to get an idea of the
21 trajectory of -- of her career.

22 Q Let's talk about pen names.

23 I am going to go to paragraph 23
24 of your report which is on page 6.

25 A Say that again? Where is it

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living. Per information available on Publishers Marketplace, Kim's biggest earning clients are romance writers and her representation of those clients was getting much less profitable from 2010 to 2019."

And then you set forth the number of Kim's deals by year, correct?

A Correct.

Q Okay.

So is it your opinion, based on the Publishers Marketplace data, that Emily Kim's representation of her biggest clients was getting less profitable during those years?

A Yes, from what I can tell.

Q All right. Did you rely on anything else besides the Publishers Marketplace data to reach that conclusion?

A Publishers market -- I looked at Publishers Marketplace. I looked at BookScan, and I looked at Amazon. Amazon wasn't really as important here. It was

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2 just a gauge as far as how many people
3 were actually responding to the authors,
4 as far as reviews and stars.

5 But, yeah, those are -- those
6 are the places that I went to for the
7 information.

8 Q And from NPD BookScan -- what
9 information from NPD BookScan did you
10 look at to determine that Kim's earnings
11 -- her representation of her biggest
12 earning clients was getting less
13 profitable during those years?

14 A Well, first, I will clarify,
15 okay. I know how publishers pay out
16 because I make the same kind of deals
17 that Emily does, so I know what a good
18 deal is. I know what a nice deal is, and
19 I know how publishers break up the
20 payment. It takes a whole lot of those
21 deals in order to make a decent living
22 for an agent because we only make 15 to
23 20 percent of that income, okay, as it is
24 paid out.

25 Okay. From the information that